Sectt. II-27—40,000—18-12-30

(General) (1931) Department.

SERIES

G.O. No. 42 dt

DATED 17-1-1931

[Despatch Abstract.]

Legal assistance -

Sheik Kader, process-server, District Court, South Kanara - G.O.No. 50 of 1931 on the file of the Sub-Divisional Magistrate, Mangalore - Conduct of prosecution - Pleader's fee - Sanctioned.

C.F. 30.

LAW (GENERAL) DEPARTMENT.

10 SEP 1931 LAW DEPARTMENT

L.Gu.284B
10.9.31
MS

Received ..... 19 *Registered* 19

Subject.

Legal assistance - Fees to pleaders - Conduct of a prosecution by process server, Sheik Kadar - District Court, Mangalore - Payment of Rs.100/- sanction - requested.

ENCLOSURES.
No. .....
.....
Spare copies .....

No. Ref.C.1-8600-31.

Station Mangalore, *Dated the* 5th September 1931 19

From (Name) Khan Bahadur J. Hussain, Bar-at-Law,
(Designation) Dt. Magistrate of South Kanara

To The Secretary to the Government of Madras,
Law (General) Department,
Madras.

Sir,

I request that Government may be pleased to sanction the payment of Rs.100/- to L.R.Sy. Rao Bahadur N. N. Suvarna, Avl., Advocate, Mangalore who was engaged to conduct the prosecution in C.C.50/31 on the file of the Sub Divisional Magistrate, Mangalore, in a complaint filed by Sheik Kadar, a process server of the District Court, Mangalore against the judgment debtor and another for offences committed by them in the course of execution of the warrant of arrest entrusted to the process server in S.C.P.711/31 on the file of the District Munsif's Court, Mangalore.

2. At the instance [illegible]
the process server was [illegible]
L.r. N. Suvarna on a fee of Rs.[illegible]
trial subject to a maximum of Rs.[illegible].
case which was first taken up for hearing [illegible]
April 1931 had 7 adjournments and terminated
successfully on 28th August 1931 in the conviction
of both the accused (the husband and the
mother, who were sentenced to two years'
imprisonment under Section [illegible] I.P.C. and [illegible]
for an offence under Section 323 I.P.C. [illegible].

A Kulkarni 8/9/31,
[illegible]

8.9.31

L.D'S.7/9.

3

Memo 4284B-18/14.9.31 Law (Genl) deptt

Legal assistance - Fees to pleader - Prosecution by Sheik Nader, process-server, District Court Mangalore - Letter from the D.M. of South Kanara No. Ref-C-1.8600-31 dated 5/9/31

63/14.9.

14/9.

b5 1-2 CF

The D.M. of South Kanara is requested to forward a statement showing the number of appearances put in by the ~~pleader~~ (advocate in the case) and the nature of the work done by him in during each appearance. He is also requested to forward a copy of the judgment in the case

NB
12-9-31.
ICGV
12.9.31

CR
14/9

To

The D.M. South Kanara

Dept
14/9

R after 3 weeks.

b2 CF

Note :- It is stated that the case underwent 7 adjournments but it is not known on how many days he had enough work. Further a copy of the judgment has not been forwarded. It may be called for

NB
12-9-31.
ICGV
12.9.31

4.

Law (General) DEPARTMENT. LG 4570B 26.9.31

Received ..... 19 *Registered* 19

NS

21 SEP 1931 LAW DEPARTMENT

Subject.

Legal assistance - Fees to Pleader - Prosecution by Head Reader, Process Server, District Court, Bangalore.

Govt Memo No. 4284/B.1, dated 14-9-1931.

ENCLOSURES.
No. .....
.....
Spare copies .....

Ref.C.1 -~~No.~~ 8600-31.

Station Bangalore, *Dated the* 20th September 1931.

From (Name) Khan Bahadur J. Hussain, Bar-at-La
(Designation) Dt.Magistrate of South Kan

To The Secretary to the Government of Madras,

Law (General) Department,

Sir,

I enclose herewith a copy of the judgment in C.C.No.8600/31 on the file of the Sub-divisional Magistrate, Bangalore. The number of appearances put in by the Advocate in the case and the nature of work done by him is detailed below.

Date of hearing.	Work done.
28-4-31	Adjourned at the request of both the parties.
22-5-31	Adjourned as the Civil Court records had not been received
18-6-31	Case adjourned at the request of the Advocate.
27-6-31	From 3.1 to 7 hours examined chief and cross examined the accused.

6

Tr. J. Mis.-124.—35,359—8-8-28

In the Court of the Sub Divl Magistrate, Gudur

JUDGMENT IN CALENDAR CASE No. 50 1931 ON THE FILE
OF THE Sub Divl MAGISTRATE OF Nellore Dn.

Friday, the 28th day of August 1931.

Present: R. Rg. R. Lakshmanarya Aiyar Asst. S.M.

Complainant ... ... Sheik Madar.
By advocate Rao Bahadur
N. N. Swamy.

Accused ... ... 1. Dasu Somanna alias Somanna Dasari
2. Kethavathi alias Sundari
Both Rakiti Dom Nellore

Offence ... ... against accused 1. Section 332 I.P.C.
against accused 2. Section 353 I.P.C.

Finding ... ... Guilty.

Sentence ... ... A1. To undergo rigorous imprisonment for two months.
A2. Released after due admonition under Section 562 (1A) Cr.P.C.

Serial number.	Description of the Accused						Date of						Explanation of delay.
	Name.	Father's Name.	Caste or race.	Occupation.	Residence.	Age	Occurrence	Complaint.	Apprehension.	Release on bail.	Commencement of trial.	Close of trial.	
1	2						3						
1.	Kongsamma alias Kamplhi	Srinivasa Kamplhi	G. S. Brahmin	Trader	Do. Town	32	10.3.31	To Police 10.3.31 complt before Court on 10.4.31	28.4.31	28.4.31	27.6.31	28.8.31	
2.	Ratnavati alias Sridevi	Do. anjmatha Dasade	Do.	Domestic	Do.	16			28.4.31				

50/31.

Judgment.

The complainant Shek Kadar Sahib is a process-server of the South Kamara District Court. At about 6 P.M. on -- 10-3-1931 the Central Nazir of the Court entrusted him with a warrant of arrest against Koggamma alias Amantha Kamthi, the 1st accused in this case. The 2nd accused Kotravathi alias Sri Devi is the mother of the 1st accused. The case is that the complainant (P.W.-1) arrested the 1st accused at about 7 O'clock in the night in a public lane known as Puthu Prabhu lane and wanted him to affix his signature on the reverse of the warrant in token of the arrest or to go with him to the Nazir. A-1 refused to sign on the warrant or to go with P.W.-1 to the Nazir and P.W.-1 refused to let him go. There was an exchange of words and A-2 came on the scene and gave a slap to P.W.-1 on his forehead saying that it was not proper for him to arrest her son after sunset. Two other relations of A-1 tried to release him from the grip of P.W.-1 and just then A-1 bit P.W.-1 and tore off a bit of flesh from his cheek.

2. Eight witnesses have been examined for the prose-cution. P.W.-1 is the complainant. P.W.-2 is the Nazir. The 1st accused was produced before him at about 8 P.M. by P.W.-1 and the injury on P.W.-1's face was also shown to him then. P.W.-3 is the judgment-debtor and P.W.-4 another process server of the court both of whom helped P.W.-1 in arresting the 1st accused and taking him before P.W.-2. P.Ws.-5 and 6 were two passersby in the lane who were attracted to the scene of offence by the exchange of words between P.W.-1 and the ac-cused after the arrest of A-1 and they were present when A.1 bit P.W.-1 on his cheek. P.W.-7 is a guard of the Dis-trict Court who took charge of A-1 that night at about 9 P.M. He too saw the injury on P.W.-1's face. P.Ws.-1, 3 and 4 went

to the District Court with A-1 that night and left him in charge of the guard. P.W.-8 is a Sub-Assistant Surgeon of the Wenlock Hospital who admitted P.W.-1 that night as an inpatient in the hospital for the injury on his cheek. It was a lacerated --- gapping wound oval in shape.2 inches long and one inch broad with the muscles exposed near the angle of the mouth.

3. A charge was framed under Section 332 I.P.C. against A-1 for voluntarily causing hurt to a public servant in the dis--charge of his duty and another charge was framed against A-2 under Section 353 I.P.C. for assaulting a public servant in the discharge of his duty. Both pleaded not guilty. Their de--fence is that the prosecution version is totally false, that P.W.-4 arrested him in the verandah of his house when he had come out to wash his mouth after his meals that night, that P.Ws.-1 and 3 were called in later, that all the three dragged him outside his house and that he bit P.W.-1 to release himself from the illegal arrest and use of force used against him.

4. Four witnesses were examined for the defence. D.Ws. 1, 2, and 3 are persons who reside in different houses in the co--pound known as Virappa hithlu in Puthu Prabhu lane. Accord--ing to them the accused also were living in a house in the same compound and there was a common court-yard for and for all these ---- houses. Their evidence is that P.W.-4 came there first and ar--rested A-1 in the verandah of his house and that he called out P.Ws.-1 and 3 who came there later. All of them dragged A-1 fro the verandah to the court-yard and thence to the lane out-side. D.W.-4 is the Station House Officer, Mangalore Town who first registered the complaint of P.W.-1 and subsequently referred it due to a mistake of law or fact as he was of opinion that the arrest of A-1 at night time in a dwelling house was illegal.

5. It is admitted that A-1 was arrested at night. prosecution version is that the arrest was in a public lane adjoining the compound while the defence version is that [illegible] in the verandah of [illegible] house.

and 4 are the witnesses who depose that A-1 was arrested in the lane. D.Ws.-1, 2, 3 are the witnesses who depose that the arrest was in the verandah of A-1's house. The house adjoins the lane and there is a court yard between the house and the lane. The prosecution witnesses may be said to be interested in the prosecution as two of them are process servers and the 3rd is the judgment-debtor who had brought them for arresting A-1 But it cannot be said that the defence witnesses are wholly disinterested. They were living in the same compound with A-1 and it may not be unnatural for them to depose in favour of A-1 and save him from a conviction in a criminal court. Even according to the defence witnesses, P.W.-1 asked A-1 to sign on the warrant or go with him to the Mazir. The Mazir's house was not far away and if really the arrest had been made illegally when A-1 was in his house that night and if all the defence witnesses 1 to 3 had been present at the time, one should expect that one or more of these witnesses should have gone with A-1 that night to complain to the Mazir about the illegal arrest. But not one of them went with A-1 as he was taken to the Mazir by P.Ws.-1, 3 and 4. P.W.-2, the Mazir is positive that A-1 did not tell him that he was arrested in his house. As a result of this arrest, the 1st accused was sent to the civil jail the next day under orders of the District Munsiff and P.W.-4 swears that the accused did not contest the validity of the arrest by pleading that he was arrested inside his house at night. For these reasons I do not believe the defence evidence that the arrest was in the house of A-1. It is urged that as A-1 had only a mundu around his waist and no other covering over the upper part of his body when he was brought before the Mazir it might be presumed that A-1 was arrested while he was in the house. But there is nothing to show that A-1 was accustomed to move about in public always wearing a coat or shirt and it might have been a warm night in March when persons of the rank of the 1st accused might go out with the minimum clothing as under-wear. The place where he

was arrested was within a few yards of his house and if he had only a mundu and no other covering over his body at the time it cannot lead to the conclusion that he was arrested in his house.

6. I therefore hold that P.W.-1 who had authority to arrest A-1 arrested him on the night of 10-3-1931 legally and that A-1 voluntarily caused hurt to him to deter him from his duty, I find him guilty under Section 332 I.P.C. I find no extenuating circumstances for the conduct of the accused. P.W.-1 was an inpatient in the hospital for 12 days. I sen-tence A-1 to suffer rigorous imprisonment for two months. As regards A-2, I have no doubt that she is also guilty of assaulting P.W.-1 under Section 353 I.P.C. But she appears to be an ignorant woman who acted as she did at the spur of the moment when she saw the process server dragging her own son in the street at night time. The Special Public Prose-cutor also concedes that her offence does not merit severe notice. I do not consider it necessary to award a substan-tive sentence to her. She is therefore discharged after due admonition under Section 562(1-A) C.P.C.

Sd/R. Subrahmania Ayyar,
28-8-1931
Sub-Divisional Magistrate.

Note: The 1st accused is committed to the Sub-Jail, Bangalore.

Sd/R.Subrahmania Ayyar,
Sub-Divl.Magistrate.

Appendix:

Witnesses examined for Prosecution:

1. Khaja Kader Saheb. 2. A. Appa Prabhu. 3. Subraya Kanthi. 4. A. Narayana. 5. Hasanabba. 6. Aithappa. 7. Joseph Kotianna 8. Mr. H. Govinda Kadiyara.

For Defence: (1) Aithappa. 2. Khanda Kamath. 3. Muvayya.

(4) Mr. A. Ananda Rao (Sub-Inspector, Bangalore Town).

Exhibits filed for the Prosecution:

A. Warrant of arrest against A-1 dated 10-3-1931.
A-1. Return of the warrant on exhibit (A) by P.W.-1.
B. Complaint dated 11-3-1931 to the Police.
C. Notice served on complainant.

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(D) Judge's order.

E. - Complaint of P.W.-1 to this court.

F. Report of P.W.-4 dated 10-3-1931 to Town Police.

G. Bound certificate., of P.W.-1.

For the defence:

I. Duplicate of notice Exhibit C served on P.W.-1.
II. Final report of P.W.-4.

Sd/R.Subrahmania Ayyar,
28-8-1931.
Sub-Divisional Magistrate.

/True copy/

Subrahmanaiya

C.C.S./28-8.
Compd.

Sub-Divisional Magistrate.

8
18.9.31.

To the District Magistrate, S.Kanara.

13

Letter Ref. C 284B-2 Law (General) Deptt
30.9.31

To

The Hon'ble the Chief Justice
High Court of Judicature
(with ~~enclosures~~ returned with reply) Madras.

Hon'ble Sir,

Legal assistance — Sheik Madar Sahib, Process-server, Dt. Court, South Kanara. ~~at Mangalore~~ -

I am directed to forward a copy of the letters noted in the margin from the District Magistrate of South Kanara together with the enclosures (in original) and to request that the Hon'ble the Judges will be so good as to offer their remarks on the recommendation of the District Magistrate

NS
30/9/31

ICW
30.9.31

30/9

Dpd. by Van Peon Messenger
Dpt'a. initials
Date 29 9.
19 31.

H1-2CF

1. Letter Ref. C.1-8600-31 dated 5/9/31.
2. " " " " 20/9/31.

H4-5CF

14

C.F.30.

DEPARTMENT. L 5229B

29.10.31

N/S

29 OCT 1931

Received ..... 192 *Registered* 192

Subject.

ENCLOSURES.

No .....

.....

Spare copies .....

R.O.C. No. 3705 B2/31

Station Madras, *Dated the* 27th October 193.

From (Name) C.C. White Esquire, (Solicitor),

(Designation) Registrar, High Court, Madras.

To The Secretary to the Government of Madras,

LAW (GENERAL) Department.
(with enclosure)

Sir,

Legal assistance - Fees to pleader-Criminal prosecution on behalf of process server, District Court, Mangalore.

Reference:-Your letter No.4284 B-2 dated the 30th September 1931

I am to state that the Hon'ble the Judges consider that, in the circumstances stated, the recommendation of the District Magistrate of South Kanara may be accepted, and that the amount of Rs.100/- due to the pleader, who was engaged to conduct the prosecution in the Criminal proceedings instituted by the process-server, District Court, Mangalore, is reasonable and may be paid by Government.

I have the honour to be,
Sir,
Your most obedient servant,

Registrar.

22

Sectt. II-5 (a)—48,004—6-11-28. (6)

Law (General) DEPARTMENT.

	Date.	Initials.
When received for Fair-copying		
When copied ..	17/11/31	
When examined ..	17/11/31	
When signed ..		
When despatched ..		

Legal assistance.

Sheik Madar Sahib, process-server, District court, South Kanara - C.C. No. 50 of 1931 on the file of the Sub-Divisional Magistrate Mangalore - Conduct of prosecution - Pleader's fee - Sanctioned.

READ AGAIN G.O. No ..... dated 192

" " " " 192

READ ALSO:—

C. No. 4284-B From the D.M. of South Kanara No. Ref. C-1. 8600-31 dated 5/9/1931.

5 CF " 4570 B " " —do— Ref C-1 8600.31 " 20/9/1931.

14 CF " 5229 B " " Registrar, High Court (R.O.C No. 3705 B 2/31) " 27/10/1931.

ORDER.

Mg.

No. 4200, dated 7.11.1931.

The Government sanction the payment of a sum of Rs 100/- (Rupees one hundred only) to the advocate who conducted (on behalf) the prosecution of Sheik Madar Sahib, process-server in the District Court of South Kanara in C.C. No 50 of 1931 on the file of the Sub-Divisional Magistrate of Mangalore.

2 The expenditure will be met from the appropriation in the Budget Estimate for 1931-32 under "24.b

Administration of Justice - Law Officers to be received - Dr. Contingencies and Supplies and Services - Voted - Fees to pleaders not in Govt service and other Supplies and Services."

To

The H. M. South Kan
" Hon'ble the C.J. (
C.L.) (
" A. G. Strong

Note:- Finance c.o. for acceptance.

The draft order maybe accepted and the case returned to Law(L)

as proposed as to circulation

L G 4284 B-3

6-NOV.1931

PUBLIC DEPT.

L G 4288 B
14.11.31